

be made available to the Department in an enforcement action).

(4) A copy of the documentation the employer used to establish the “prevailing wage” for the occupation for which the H-1B nonimmigrant is sought (a general description of the source and methodology is all that is required to be made available for public examination; the underlying individual wage data relied upon to determine the prevailing wage is not a public record, although it shall be made available to the Department in an enforcement action); and

(5) A copy of the document(s) with which the employer has satisfied the union/employee notification requirements of § 655.734 of this part.

(6) A summary of the benefits offered to U.S. workers in the same occupational classifications as H-1B nonimmigrants, a statement as to how any differentiation in benefits is made where not all employees are offered or receive the same benefits (such summary need not include proprietary information such as the costs of the benefits to the employer, or the details of stock options or incentive distributions), and/or, where applicable, a statement that some/all H-1B nonimmigrants are receiving “home country” benefits (*see* § 655.731(c)(3));

(7) Where the employer undergoes a change in corporate structure, a sworn statement by a responsible official of the new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and EIN of the new employing entity (*see* § 655.730(e)(1)).

(8) Where the employer utilizes the definition of “single employer” in the IRC, a list of any entities included as part of the single employer in making the determination as to its H-1B-dependency status (*see* § 655.736(d)(7));

(9) Where the employer is H-1B-dependent and/or a willful violator, and indicates on the LCA(s) that only “exempt” H-1B nonimmigrants will be employed, a list of such “exempt” H-1B nonimmigrants (*see* § 655.737(e)(1));

(10) Where the employer is H-1B-dependent or a willful violator, a summary of the recruitment methods used and the time frames of recruitment of U.S. workers (or copies of pertinent documents showing this information) (*see* § 655.739(i)(4)).

(b) *National list of applications.* ETA shall compile and maintain on a current basis a list of the labor condition applications. Such list shall be by employer, showing the occupational classification, wage rate(s), number of nonimmigrants sought, period(s) of intended employment, and date(s) of need for each employer’s application. The list shall be available for public examination at the Department of Labor, 200 Constitution Avenue, NW., Room N-4456, Washington, DC 20210.

(c) *Retention of records.* Either at the employer’s principal place of business in the U.S. or at the place of employment, the employer shall retain copies of the records required by this subpart for a period of one year beyond the last date on which any H-1B nonimmigrant is employed under the labor condition application or, if no nonimmigrants were employed under the labor condition application, one year from the date the labor condition application expired or was withdrawn. Required payroll records for the H-1B employees and other employees in the occupational classification shall be retained at the employer’s principal place of business in the U.S. or at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if an enforcement action is commenced, all payroll records shall be retained until the enforcement proceeding is completed through the procedures set forth in subpart I of this part.

(Approved by the Office of Management and Budget under control number 1205-0310)

[59 FR 65659, 65676, Dec. 20, 1994, as amended at 60 FR 4029, Jan. 19, 1995; 65 FR 80232, Dec. 20, 2000; 66 FR 63302, Dec. 5, 2001]

## Subpart I—Enforcement of H-1B Labor Condition Applications

SOURCE: 59 FR 65672, 65676, Dec. 20, 1994, unless otherwise noted.

**§ 655.800 Who will enforce the LCAs and how will they be enforced?**

(a) *Authority of Administrator.* Except as provided in § 655.807, the Administrator shall perform all the Secretary's investigative and enforcement functions under section 212(n) of the INA (8 U.S.C. 1182(n)) and this subpart I and subpart H of this part.

(b) *Conduct of investigations.* The Administrator, either pursuant to a complaint or otherwise, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) *Employer cooperation/availability of records.* An employer shall at all times cooperate in administrative and enforcement proceedings. An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 212(n) of the INA and/or this subpart I or subpart H of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(n) or this subpart I or subpart H of this part. Any such interference shall be a violation of the labor condition application and this subpart I and subpart H of this part, and the Administrator may take such further actions as the Administrator considers appropriate. (Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) *Confidentiality.* The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise

under this subpart I or subpart H of this part.

[65 FR 80233, Dec. 20, 2000]

**§ 655.801 What protection do employees have from retaliation?**

(a) No employer subject to this subpart I or subpart H of this part shall intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against an employee (which term includes a former employee or an applicant for employment) because the employee has—

(1) Disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 212(n) of the INA or any regulation relating to section 212(n), including this subpart I and subpart H of this part and any pertinent regulations of INS or the Department of Justice; or

(2) Cooperated or sought to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 212(n) of the INA or any regulation relating to section 212(n).

(b) It shall be a violation of this section for any employer to engage in the conduct described in paragraph (a) of this section. Such conduct shall be subject to the penalties prescribed by section 212(n)(2)(C)(ii) of the INA and § 655.810(b)(2), *i.e.*, a fine of up to \$5,000, disqualification from filing petitions under section 204 or section 214(c) of the INA for at least two years, and such further administrative remedies as the Administrator considers appropriate.

(c) Pursuant to section 212(n)(2)(v) of the INA, an H-1B nonimmigrant who has filed a complaint alleging that an employer has discriminated against the employee in violation of paragraph (d)(1) of this section (or § 655.501(a)) may be allowed to seek other appropriate employment in the United States, provided the employee is otherwise eligible to remain and work in the United States. Such employment may not exceed the maximum period of stay authorized for a nonimmigrant classified under section 212(n) of the INA. Further information concerning this provision should be sought from the